

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

CHRISTOPHER LIPSEY, JR.,

Plaintiff,

v.

R. DIAZ,

Defendant.

No. 1:20-cv-01010-DAD-GSA (PC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS

(Doc. No. 4)

Plaintiff Christopher Lipsey, Jr. is a state prisoner proceeding *pro se* in this civil rights action under 42 U.S.C. § 1983. Plaintiff has not filed an application to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915, nor has he paid the \$400.00 filing fee. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On July 24, 2020, the assigned magistrate judge issued findings and recommendations recommending that the court not permit plaintiff to proceed *in forma pauperis* and that he be required to pay the filing fee in order to proceed with this action because: (1) he is subject to the three strikes bar under 28 U.S.C. § 1915(g); and (2) the allegations in plaintiff's complaint do not satisfy the "imminent danger of serious physical injury" exception to § 1915(g). (Doc. No. 4 at 4–6.) In addition, the magistrate judge found that despite plaintiff's reference to a "28 U.S.C. § 2241 motion" in his complaint, the allegations in his complaint challenge his conditions of confinement at Kern Valley State Prison and assert a claim for violation of the Eighth

1 Amendment of the U.S. Constitution properly brought under 42 U.S.C. § 1983. (*Id.* at 2–3.)
2 Accordingly, the findings and recommendations also recommend that plaintiff’s 28 U.S.C. § 2241
3 motion be dismissed and that this case proceed only as a civil rights action under § 1983. (*Id.* at
4 2.) The pending findings and recommendations were served on plaintiff and contained notice that
5 any objections thereto were to be filed within fourteen (14) days after service. (*Id.* at 7.) No
6 objections have been filed and the time in which to do so has now passed.


7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C), this court has conducted a
8 *de novo* review of the case. Having carefully reviewed the entire file, the court concludes that the
9 findings and recommendations are supported by the record and proper analysis.

10 Accordingly,

- 11 1. The findings and recommendations issued on July 24, 2020 (Doc. No. 4) are
12 adopted in full;
- 13 2. Plaintiff’s 28 U.S.C. § 2241 motion is dismissed from this case, and this case shall
14 proceed only as a civil rights action under 42 U.S.C. § 1983;
- 15 3. Within thirty days from the date of service of this order, plaintiff is required to pay
16 in full the \$400.00 filing fee for this action; and
- 17 4. Plaintiff’s failure to pay the required filing fee as ordered will result in the
18 dismissal of this action without prejudice.

19 IT IS SO ORDERED.

20 Dated: September 28, 2020

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23 UNITED STATES DISTRICT JUDGE
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